

ORIGINAL

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

None to C

ALLEN MORSLEY,
petitioner

CASE# 1:01-CV-01003

Vs.

DONALD ROMINE,
respondent

FILED
HARRISBURG, PA

AUG 13 2003

MARY E D'ANDREA, CLERK

Per 9/1/03

**MOTION TO AMEND TO CONFORM TO EVIDENCE
PURSUANT TO RULE 15(b) OF FEDERAL RULE
OF CIVIL PROCEDURE , WITH INCORPORATED
MEMORANDUM OF LAW IN ACCORD WITH LR 7.5**

NOW COMES , ALLEN MORSLEY (hereinafter "petitioner"), appearing pro se, in the above captioned matter , and hereby [R]espectfully moves this Honorable ' Judge pursuant to Rule 15 (b), of federal Rules of Civil Procedure , [O]r any Other Rule ' This court deems appropriate to conform evidence at this juncture ' in the interest of [J]ustice .

THE PETITIONER SUBMITS THE FOLLOWING:

#1.

That petitioners Trial Suffered [S]tructural Defect That cannot be cured by harmless error Standards ; because it goes to the **Subject Matter** , of the courts **[J]urisdiction** .

#2.

That Acting * U.S.Attorney **Christine Hamilton** was Not Licensed Attorney in **Good** standing of the North Carolina State Bar [O]r the Supreme Court of North Carolina . In Violation Of **Seperation** Of **Government** [D]octrine , and in Violation of **28 U.S.C.Section § 530B**.

#3.

That Current Federal Conviction/Sentence **Defectively "Enhanced"** Based , Upon **Actual Innocence** of **Carrer Criminal Statute** . In Violation **gratuitous** [C]reature Of **[L]egislature** . (Youthful Offender Adjudications).

THRESHOLD MATTER

Petitioner would like to thank this **Hon. Judge** for withdrawing prior motion to **Amend** ' for after reviewing said motions' The petitioner found [n]ot only clerical error, But also error in the patterns of argument. And the petitioner Prays that this **Hon. Judge** continues to honor HAINES Vs. KERNER, As the Law sees fit . For the petitioner has been [P]rejudiced for not knowing the local Rules in the past : And the petitioners **Notice of Appeal** was not [H]onored . SEE Exhibit #1.(A). (And) 1.(A).1 , Where petitioner' was lead to believe that he was preserving issue for appeal of **denied 2255**.

STANDARD OF REVIEW

HAINES VS. KERNER, 404 U.S. 519 , 30 L.Ed.2d 625 . As the petitioner is A Layman of law , petitioners Litigations should be held to less Stringent Standards than A Lawyer.

STATEMENT OF FACTS

Fletcher Johnson , Being a Duly Licensed **Firearm** Distributer ' Was [I]ndicted and arrested for failing to keep records of firearm sales , After **Repeatedly** Being **required** to secure such records by **A.T.F. Tracer Department** . Fletcher Johnson had sold in Excess of **1200(Hundred) Firearms** . Many of which had become **Obliterated** when they were found in drug related areas and Later traced back to this **Firearms Salesmen** . So when fletcher **Could** [N]ot come up with records of **who** the firearms were [S]old to ' . Fletcher was Charged with **Conspiring to sell firearms** which had the Serial # **Obliterated** And using a firearm during/and in relation to a drug trafficking crime.

The Department of Treasury (Bureau of Alcohol-Tobacco-And Firearms) 4530 Park Road , Suite 400 , Charlotte NC Carolina . 28209 [I]nvestigated Case # 13530 93 2504 [L]. Secured Indictment ' [A]nd Then Submitted Case, For [P]rosecution To United States Attorney JAMES R. DEDRICK of Raliegh North Carolina . This [I]ndicment Secured By[A.T.F.] Department of the Treasury ' " Code Named " the Fletcher Johnson Organisation , Charged Fletcher Johnson With Conspiring To [S]ell Firearms which had the Serial Numbers Altered . All in Violation of Title 18 U.S.C. Section 371 [C]ount # 2. Charged Fletcher Johnson with Using A Firearm During A Drug Trafficking Crime . In Violation of Title 18 U.S.C. Section 924(c) SEE EXHIBIT # 2.(A). Investigation Of Case# [13550 93 4565 [T] Was - [I]nitiated Aug 16th 1993 , (Almost two (2) Months [A]fter Indictment was [S]ecured by A.T.F. Department . Nor was there any [S]uperceding ' Indictment that could [B]roaden the charges made by grand jury .

1.(B).

During petitioners Trial , (Closing Arguments) Trial Judge Abandoned the The Trial Court in the [P]resence of [J]urors. The petitioner [O]bjected Yet ' *Acting U.S. Attorney Ignored petitioners **Objections** . And proceeded with argument . the second [O]bjection (which was never recorded) Completely Changed the [M]ood of the Trial ! As if the Trial had ended ! Where Judge was [A]bsent . And Acting U.S. Attorney Used this Defect to Show the jury how Un-important the petitioners rights were . whereupon the [C]lerk of Court ' Put her hand over the **Microphone**' (While leaning Away from it/in the presence of the jury/? And [S]poke loud enough for The Entire Court To [H]ear ' And Stated (I Quote) " He [O]bjected Ms. **Hamilton**" (End Quote) Only then ' did Acting * U.S. Attorney Stop Speaking . She just Stared at petitioners Counsel with **Scorn** ' Yet said Nothing . SEE EXHIBIT 1.(A).

This Still ' Staring Contest went on for what seemed like three minutes . when one of the **Courts Staff** Decided that someone should summon the **Trial-[J]udge !** [A]fter waiting for a minimum of **(8) - (10) Minutes .** The [T]rial [J]udge Appeared ! **Overruled [O]bjection ' and** left the court as **Fas-**t as he had come in . (Never [addressing what **[I]nfact** he was overruling

Although petitioner felt that this was **[O]dd ,** that acting* U.S. Attorney' Diregarded petitioners objections . It has become very clear **why** Acting* . U.S. Attorney ignored the petitioners objections . As **[O]nly A Judge** can - Rule in a Court of **Law .** And **without A [J]udge ,** there can be no **[T]rial**

1.(C).

During petitioners trial , the county jail began turning around the petiti-oners **Visitors .** Petitioner made the Trial court aware of this in open - Court . [A]lso advising the petitioner that he could **[N]ot** allow the pe-titioner to have a word with his family in the court house ' while insisti-ng that he could not control what the county jail does (**Wilmington**) **[Y]e-**t [A]fter petitioners trial had come to an end , petitioner was **Informed'** that the **judge** had been seen **[A]lone** talking with one male **[J]uror.** And t-hat they were also seen leaving the court house **together** during the petiti-oners **[T]rial .** yet the [T]rial Judge (James C. Fox) in [O]pen Court 'Sp-oke in **[P]rivate** with one **Male [J]uror** [Before he was seated in the jury - **Box.**] Afterwards the judge stated **Only** that it concerned **another matter .** petitioners objections to this matter was not recorded Because Court appoi-nted attorney mr cooper ' who agreed that it was error , nevertheless was Afraid to Question the courts Actions . so when the petitioner made couns-el aware of such **behavior** by the Trial Judge ' Counsel asked the petitioner to **[G]et** the people who had witnessed this ' to sign / and **Noterize** what t-hey had witnessed , [A]nd **[S]end** the documents to counsel. **Which they D-**id . SEE EXHIBIT 1.(B). and 1.(C). therein Counsel recalled that Male -

[J]uror who trial judge called to the bench ' to speak in **private** was **error** Also . (He nevertheless said nothing) and this part of the transcripts was **[N]ever Transcribed** . (where jurors where empanelled) Yet counsel never **Introduced** any Document [O]r Testimony in court for judge might have chance to explain such **Behavior** ' or if such **contact** with juror could be deemed **harmless** . [Even after counsel possessed NOTERIZED STATEMENTS THAT IT HAD TAKEN PLACE] At sentencing the petitioner would **attempt** to address this matter himself . The court would then remand the petitioner to the custody of the U.S. Marshals without ever recognising the violations that the Petitioner Charged had plagued his trial . SEE EXHIBIT # 1.(D) Yet the Petitioner asked counsel for the noterized Statement in the presence of trial judge ' at sentencing . But to no avail . Infact what counsel did turn over to the court ' **[V]iolated** Attorney / Client **privileged** information . Yet the papers that had been noterized , counsel turned them over to family members **[A]fter** the petitioner was taken away by marshals SEE EXHIBIT #1.(C). yet when the petitioner argued that there exsisted a **Conflict of interest** ' the Fourth Circuit Court of appeals ruled that there was ' Yet reasoned that it was **"Petitioner who Caused Conflict** .

1.(D).

During petitioners trial , Acting * U.S. Attorney (**Christine B. Hamilton**) ' Moved the court to **Allow 404(B)** evidence ; to include testimony of two people who were not charged in **Alleged** Indictment . 1. **Teshomi Crenshaw** and 2. **Joseph Bostic** . upon objections by the petitioner , The court ruled that testimony was to **prejudicial Under 403** . [B]ut After ' argument by Acting* U.S. Attorney Christine B. Hamilton . The Court Addressed Petitioner ' Stating :

" You can allow evidence to be introduced ' [O]r " you can be prosecuted for this at a **later date..**

Cautioning petitioner to think it over Carefully . whereupon counsel for

Whereupon Counsel for the petitioner stated that the petitioner **[A]sked** that he continue to **fight** to keep it out (note that Acting* U.S. Attorneys' Position , was that the petitioner continued to conspire to sell drugs after all of the **alleged** co-conspirators has been arrested) And after further argument by acting * U.S. Attorney ; The judge **ruled** that it would permit the **testimony under limited circumstances** ' and that the petitioner could be **prosecuted** at a later date for the alleged **violation** . and the judge instructed the jury in this-way :

" That they were only to consider this testimony for the purpose of **intent** and **motive** . and further that this evidence will have no bearing **whatsoever** to do with the sentence the petitioner would receive if convicted . nor would the drugs be counted towards the petitioners sentence . As the petitioner may be charged for such violation at a later date . and this evidence should **not** be considered for **(alleged)** co-conspirators **Mcoy and Adams** . **[note the petitioners objections]** .

On direct appeal to the **Fourth Circuit Court of appeals** , Petitioner **raised** the argument that **404(B) Evidence was So Prejudicial** ' That it **Denied** the petitioner a **fair Trial** , and **Violated Due Process of [L]aw** . The Fourth Circuit **[A]greed** that probative value was far **outweighed** by **[P]rejudice** to the defendant (403.) But **reasoned** ' Because petitioner continued to **denie** that he was **[R]aleek** ' the evidence was rightfully **introduced** for the purpose of **[I]dentity** . This **[R]uling** was a **Variance** from the way that the jury was **instructed** . As this theory was rejected' by the trial court , and further understood to be too prejudicial . in light of the fact that petitioner **[O]nly Defense** was that he was not the person from the very beginning .

1.(E).

On **Oct.26/2001** . The petitioner filed motion for leave to conduct **[D]iscovery** . (**MORSLEYS REQUEST FOR ADMISSIONS**) Pursuant to Rule **36 (a)** of federal Rules of Civil Procedure .

ADMISSION # 35 READS AS FOLLOWS

"That Christine B. Hamilton , Nor Christine Blaise Hamilton"
[O]r Christine Hamilton , Is Not A Licensed Attorney By North Carolina State Law.

ADMISSIONS # 36 READS AS FOLLOWS

"That It Is A Crime In North Carolina To Practice Law With-
out A License .

Therefore ' Whoever this person was ' this person Amended the Indictment.
Vouched for un-savory Characters (who she had first hand knowledge would
and Did ' Perjure themselves before a jury in a court of Law) Acting * U.
S. Attorney also introduced belongings of [C]laudia Sims into evidence to
Mislead the jury ' knowing that claudia sims would denie that these were
petitioners belongings (Acting* U.S. Attorneys excuse being ' that she !
never Actually spoke with this Government Witness) Acting * U.S. Attorn-
ey [A]lso Subordinated [P]ejury when she Allowed (Goverment Witness) And-
rea Hendricks to testify that he said ' Raleek during A Wire Tapped Conve-
rsation . Where he was asked "Who" He Was Getting the Drugs From that he
Was Selling Police Informant[Fletcher Johnson][4 ½ Ounces of crack coc-
aine] And He Said "Keith" . (Agents who manned servailence - Special-
Agent Mike Fannelly - and Dectective Ray Moss) Also Testified that An-
drea Hendricks Said Kieth on the Wire tap . Yet' On the stand ' Hendric-
ks Testified that he said raleek . (Which Acting* U.S. Attorney Knew was
[P]erjury) [N]or' was the petitioner allowed to impeach witness concer-
ning transcripts that were Introduced as Exhibits ? As the court ruled '
that they were not signed Statements ' Just were just notes taken by po-
lice officers Recollection of what was said . (And Further) That if the
Witness doesnt remember ' He-Just Doesnt remember ? [N]or was the [A]ct-
ual Tape Ever played for the [j]ury ? nor has this tape ever been hea-
rd by [A]nyone but Acting U.S. Attorney .

[I]ronically ' Acting * U.S. Attorney (Under **Oath**) Stated that she had made Counsel for the petitioner **Aware** Of such tape . And Called counsel **A Bold Faced Lie** ' when he advised the Court that he had **Never Been Aware** that Such Tape Exsisted , That he had only been given the **transcripts** . **The** court then Ruled ' That [I]f' counsel for the petitioner had been made aware of transcripts ' then surely **he** mustve known that the tape exsisted ! The **Rub** is that ' **Every** Witness For the **Government** was Lead to say that They Somehow Knew who **Raleek** was ? And those that would Say different Were **quickly** Re-introduced to this concept . SEE Bond Hearing] Where agent Fannelly took the stand . And was asked ' whether he was the Agent In Charge of the investigation and Further [I]ndictment of the case before the Court . While speaking from the Satnd , He Was asked did he arrest the individual **known** as **John doe** And he answered ' Yes , I arrested the - **john Doe** . And then Acting* U.S Attorney Began Interjecting the Name **Raleek** . Until the agent Began doing the Same . yet this sort of leading would continue throughout the whole process . Infact **one witness (GW)** Would actually Say that he knew Allen Morsley . When the petitioner would Later be Sanctioned for **Obstruction** of justice , Because the petitioners true name was **ALAN MOSELY** . IN OTHER WORDS ' GOVERNMENT WITNESSES WOULD HAVE **SAID** THEY KNEW THE PETITIONER BY ANY NAME THE GOVERMENT BELEIVED PETITIONERS NAME WAS . [AND THEY DID].

1.(F).

Petitioners **Motion** for **Bill Of Particulars** Was also **Denied** . As Acting*U.S. Attorney Assured the court that she had made the petitioner aware of the Case she had planned to introduce . Yet the petitioner was not **known** to the Court / Not **Known** to agents / not **Known** / not **Known** to **Alleged** Co-conspirators . nor **indicted** for felon in possession of **firearm** . [I]nfact ' the **Alleged Warrant** for the petitioner ' was not even filed [A]fter All of the Co-Conspirators were **Arrested** .

Which Clearly shows that even [A]fter **Amending the Indictment** ' Acting * U.S. Attorney Still had know [I]dea who the petitioner was . Acting * ? U.S. Attorney ' While addressing the court during the petitioners trial, [S]tated that it was She who ' Asked [A]gents to Make **Sure** they had the [R]ight Person . [I]ronicly (During the same trial she would assure That Agents [K]new who they had (Closing Argument). The agents therein testified that they then Phoned **Fletcher Johnson** . [A]dvising him that they thought they had the gentlemen [R]oy Lee . So come to the Raleigh police department and [I]dentify him . Petitioner was then put in a Room so that this goverment witness could view the petitioner through a One way glass ' **With only the white Male officer (Det. Ray Moss)**there-in (The Same officer who had [O]riginally Arressted **Fletcher Johnson**) who Just so happened to be holding the petitioner around the neck (in a choke hold) Fletcher johnson will also testify that he knew the poli-were interested In another person . Also that officer **moos** called him ' And told him that [H]e [T]hought that it was a [Q]uestion for the jury ' whether the **Petitioner** [W]as the [O]ne Named in the [I]ndictment. Yet, When fletcher johnson **Attempted** to identify the petitioner from the stand . (Over the petitioners [O]bjections) When **Fletcher Johnson** picked, The **Wrong Person** ! The [T]rial Judge **Removed** the [J]ury from the court [R]oom ? While The Acting * U.S. Attorney was already [Y]elling t-he [L]ights must be hurting his **Eyes** . The judge answered that the lights in this court room are perfectly **adequate** !

" **The Judge** ' Then Told Acting * U.S. Attorney that [h]er" Man [D]oesnt know what hes talking about."

Yet the relevant question would be ' [I]f Trial Judge , Were **Allowed** to Assuume the role as [G]rand Jury ! And then [D]elegate that **Authority** ' To the Jury , Why was the jury [R]emoved when Trial judge [H]imself felt that goverment [W]itness **[F]letcher Johnson** [D]idnt Know what he was Talking [A]bout ?

The fact of the matter [I]s that ' [T]rial Judge **Over** the Petitioners Objections ' Allowed the matter to be tried in Court **without** being authorized to do so by the [G]rand Jury . And With the Question of **Jurisdiction** Unsettled and further ' [D]elegated to the Judge Impannelled Jury . Inwhom Trial judge Asked to leave the court room , When [H]e **thought** Himself ! That Fletcher Johnson (who Made **every** [C]ontrolled Buy / Inwhich the **Entire Case** Was Persecuted) Didnt Know what he was Talking about when He Attempted to **identify** the petitioner before the jury . Fletcher Johnson Told Agents that he Had sold **18 Firearms** to A gentlemen by the name [R]oy Lee (A Very Common name in that part of the South) Yet ' Fletcher Johnson would [T]estify that Agent **Fannelly** / And **Detective Moss*** **Thought** that his pronuciation of [R]oy Lee Didnt Sound [R]ight ? SEE TTs. pg # 56 . Infact the Alleged Indictment made no mention of "**Roy Lee**" . even though thats who Detective Ray Moss called Fletcher Johnson Down to the police station To [I]dentifie ! when the petitioner was arrested [S]ept 23rd 1993 . (Almost three months after alleged **indictment** had been filed in court) Alleged [I]ndictment made no mention ' Of [Roy Lee]. Nor Did Alleged indictment Mention [J]ohn Does **Race/Complexion** / **Age** / **Height** / **PHONE NUMBER** / **Home Address** / **Facial Hair** / [O]r Lack there Of / **Scars** / **Tattos** . (Nothing) ! And although **Amended** indictment alleges that John Doe was Also **Known** As [B]aldhead . During **Bond** Hearing, when Argument was made concerning this Baldhead ' Special Agent Mike **Fannelly** ' **When Asked :**

" [W]ouldnt you think that the name **Baldhead** would be some Kind " Of **Indication** that the man you were looking for ' would be some one with a baldhead , [O]r Atleast someone with [S]hort hair.

Agent Fannelly Would then state :

" This is [N]ot always the case ' [A]s Ive seen **Very Big** individuals that go by the name [T]iny [S]ort of a play on words."

So ' Again [j]ohn Doe could have been **[A]nybody**. Because the petitioner had hair on his head ' [I]t didnt mean that he was **[N]ot** John Doe. Yet when asked where the name **[B]aldhead** had come from' **[A]ll Agents testified** that this **[C]ame** from **Fletcher Johnson**. **[Y]et' Agents testimony** was they they **called** Fletcher - Johnson when **they** believed that they had **[R]oy lee**. **[N]ot Baldhead**. Acting * U.S. Attorney **Amended** the **[I]ndictment/ And Verdict Sheet** by removing all mention of The **[J]ohn Doe** that Had **Allegedly** Been Indicted. **[R]emoving any [Q]uestion** as to who was **[I]ndicted** by **[G]rand [J]ury** . Infact' It has become **very** Clear From **[L]ater Developments** , That **[A]cting * U.S. Attorney Christine Hamilton** (Who's **Signature** Has been Affixed to **[B]ogus** Indictment) Was **never** before **[A]ny Grand Jury** ' For Any Of the Charges that Petitioner Was Called to **[A]nswer** . **[N]or** has she taken **[A]ny Witness** before the Grand Jury So that Grand Jury **Might** Decide that there was probable Cause for the petitioner to Be Charged!

1.(G).

Now ' to find out that this Acting * U.S. Attorney **[Christine Hamilton]** Was **not** a **[M]ember** in good standing of the **Bar of the Supreme Court** of North Carolina ? That this person **[I]s [N]ot ' Licensed** to practice Law in the Court Room inwhich The petitioner was on Trial for his **[L]ife'** (That has been **Taken**) **[W]ithout Indictment**. That Trial Judge **[A]bandoned** the court room ; Where Acting U.S. Attorney was **[N]ot [B]ound [O]r [C]onstrained Under Any [O]ath ' Nor Ethics . Where'** Fourth Circuit Court of Appeals Recognised that there was a conflict of interest between counsel for the petitioner and his **client** (the petitioner) Yet found that conflict was caused by the petitioner " Who **steadfastly** Argued that he was **N-**ot the **[person]** who had been charged for this **[C]rime**. The petitioner now points to the **[F]act** . That this conflict was caused by Acting *U.S. Attorney, And The **[F]raud** that the court Attempted to **Cover up** ' When he assured counsel for the petitioner (Robert Cooper) that this case **[W]as [N]ot** Going back to the **[G]rand Jury**. Furthermore , The Fourth Circuit Ruled that Acting* U.S. Attorney**[C]omments** during **[C]losing Argument** were **error** ' namely when she **stated to the [J]ury** :

" [T]hat [Y]ou [D]ont have to [W]orry about these [T]wo, "
[T]hey [A]lready ' [C]onfessed.."

At the same time pointing to both **alleged** co-conspirators that the petitioner was **[F]icticiously** being tried for conspiring with . yet' the Fourth Circuit, would rule that Acting* U.S. Attorney had **Apologized** , and furthermore 'tha-
t [T]rial [J]udges **Instructions** should have **cured** any **[H]arm**
Yet ' [T]rial Judge had **[A]bandoned** the court room while statements were made and could in **No-way** cure the harm that had plagued the entire trial ' when a-
cting * U.S Attorney was not an **[O]fficer** of the court . [N]or a member in ' Good standing of the Bar of the North Carolina , Or **Licensed** attorney in No-
rth Carolina . Who Caused A Trial to be **Commenced** Without [I]ndictment by ' [G]rand Jury . But Falsified A [B]ogus Document / Inwhich [B]ares her [N]ame.

ARGUMENT # 1.

PETITIONER ARGUES THAT FORUM FOR FAIR TRIAL IS DESTROYED WHEN JUDGE IS ABSENT AT CRITICAL STAGE OF PROCEEDINGS .

As trial itself ' Consists of a contest between Litigants before a [J]udge ' When the judge is absent at a "Critical Stage" The **Forum** Is [D]eystroyed , and in A [R]eal Sense ' There is [N]o [T]rial . SEE GOMEZ Vs. UNITED STATES, 490 U.S. 858,873,109 Sct. 2237, 104 L.Ed.2d. 923 (1989); In the instant case before this court . Trial Judge James C. Fox had Abandoned the trial on a - Number Of Occassions During the petitioners [T]rial , Inwhich Acting U.S. Attorney Was not bound by any [O]ath Nor Constraints. During Closing Arguments for the petitioner. [T]rial Judge (James C. Fox)(Hereinafter "Trial Judge) , Once Again **[A]bandoned** the court room as if counsel for the petitioner Was not Worth Listening to ' As the petitioners **[O]nly** Defense was that he was not the person who had been [I]ndicted by Grand jury , And further that he had [N]ot been Charged . SEE UNITED STATES Vs. MORTIMER, 161 F3d. 240, at 242 . (3rd.Cir 1999); As the framework "Within which" the [T]rial proceeds ' has Been [E]liminated ;

SEE ARIZONA Vs. FULMINANTE, 499 U.S. 279, 309-10, 111 Sct. 1246, 113 L.Ed.2d. 302 (1991); And the **Verdict** is A Nullity; Gomez , 490 U.S. at 876, 109 Sct. 2237 . In [P]etitioners Case , The Structural Defect goes [F]ar beyond just the absence of A Trial Judge during a "Critical Stage" , Infact it goes far Beyond [J]ust an **Impartial Judge** [O]r [I]mpartial Jury. SEE TUMEY Vs. OHIO, 273 U.S. 510 , 47 Sct. 437 (1927);

" Trial error ' the Majority Ruled "
Where subject to harmless ~~error~~
analysis, [S]tructural [D]efects
where not since they [D]efy ana-
lysis by harmles error standards
id. at 309, 111 Sct. at 1265 .

As the trial judge is not [O]nly A Mediator , but one authorized to [H]ear/See And [F]eel the matter in Dispute ; And then Judge the matter [A]ccording to Law to **Fact**. SEE WAINRIGHT Vs. WITT, 469 U.S. 412, 428 , n. 105 Sct. 844, at 855 (1985);

"[I]n exercising its discretion the"
Trial Court must be Zealous to pr-
otect the rights of the Accused.

In the instant case before this court ' The trial judge left the court room and Acting * U.S. Attorney Began to ~~Attempted to~~ lower the burden of the goverment ' By [E]xplaining that they didnt need to [Q]uestion whether there was a [Consp-iracy] As Two of the Alleged Co-conspirators on trial had Already [C]onfessed. After ' All attorneys for the Defendents had objected . Acting U.S. Attorney ' [O]n the Record [S]tates : "The Judge [I]snt [H]ere." yet when trial judge Returned . He instructed the jury that he was not aware of any **Signed** confessions ' And that the Jury Should disregard anything said about Confessions ' And left the court Again . When the petitioner [O]bjected to the trial Judge being Absent on Another [O]ccassion , Acting U.S. Attorney Just [I]gnored ' the Petitioner , And just spoke Lowder. SEE **EXHIBIT # 1.(A)**. When it Appeared that the trial had run amuck ' The Clerk Of Court Covered the microphone in front of her ? And Basicly Yelled ' [He Objected Miss Hamilton]

And [O]nly then did she (Christine Hamilton) Stop Speaking ! Although the Trial Had Come to and end [L]ong Before then . Acting * U.S. Attorney would then begin looking at Petitioner / and his counsel with [S]corn without ' Saying A Word . After about three minutes of complete silence ' A Court a- id went to [F]ind the [T]rial judge ! After waitng ' at a **minimum** of 8- to 10 Minutes , the Trial judge Appeared ' [O]verruled the [O]bjection and ' Left the Court room As Fast As He Had Come [I]n. One the other hand when , The petitioners Counsel began his summation (Closing Argument) Trial judge - abandoned the court room ' and When he came back he told counsel for the p- etitioner that his time was up , Cutting him off as he seated himself on t- he bench . The [S]ixth Amendment reflect[s] a profound judgement about the Way in which Law should be enforced and [J]ustice administered , giving one an inestimable safeguard against the **corrupt** or overzealous prosecuter and a- gainst the complaint , [B]iased ,or eccentric Judge . SEE DUNCAN Vs. LOUISI- ANA, 391 U.S. 145, 155-56, 20 L.Ed.2d. 491, 88 Sct. 1444,45 Ohio Ops 2d. 198 (1968). Petitioner Argues that it is [I]mpossible to know how this action Could have [A]ffected the jurys Verdict . [C]oupled with the trial judges **Contact** with One Juror (Male) It [I]s Also Very hard to **imagine** that the ' [A]ffect was **favorable** for the petitioner . And if One male juror could Contaminate the Whole [J]ury ' The [T]rial Judge should have been in the Court to [O]versee the trial inwhich he presides . Gomez, . There are Leg- ions of cases ' That up-hold the Discretion of the Judge , [A]nd his rulings [y]et ' the [J]udge must be in the court to Discern . Whether the Judges absence from the bench is an error of Constitutional Magnitude is a [Q]ues- tion of Law SEE LESKO Vs. OWENS, 881 F2d. 44, 50 (3rd. Cir.1989).

Furhtermore ' when the Third Circuit Court of Appeals Decided Mortimer (cite at 161 F.3d. 240 (3rd. Cir. 1998); [J]udge Becker , noted that the [Supreme Court has found **Structural errors** only in a limited class of cases . Yet reasoned that under the facts of this case (Mortimer) He believed that the [L]abel **structural** ' was [N]ot [I]nappropriate . As The Court Reasoned that :

" [P]rejudice to the Defendant from the **Jury** inferring that " defense was not worthy of listening to ' [M]ay have Occurred ; It is not necessary for the defendant to demonstrate it . [T]he **Structural Defect** determines the Result ." i.d. at 242.

In The case before this **Honorable Judge** , petitioner argues [T]rial judges Behavior undermined the process in **every** imagineable way that he [C]ould . From the onset of the proceedings . TUMEY Vs. OHIO, 273 U.S. 510, 71 L.Ed. 749 , 74 Sct . 437 (1927). As the petitioner [Q]uestioned the Trial Judges **subject Matter** [J]urisdiction to **even** entertain charges **that were not** Authorized by the [G]rand - [J]ury . The Trial Judge therein [R]uled that :

" [T]he **Grand Jury** [I]ndicted **Somebody** , And He thought that " It was A [Q]uestion for the **petit jury** to decide who [T]hat person was ?."

After Counsel For the petitioner **explained** that this was a matter that [O]nly the grand jury could decide . before the petitioner should **even** be called to **plea** . (As the petitioner denies that he is the person [John Doe] allegedly named .) The trial judge then Asked Acting U.S. Attorney whether the petitioner, was a co-defendant of **Mckoy** ? and after she answered that the petitioner was ! The Trial Judge therein [R]uled that :

" [H]e could promise you that this case would [N]ot be going " back to the [G]rand Jury . "

Counsel then reminded the judge that the petitioner had been **identified** by [V]ery suggestive means . yet after futher objections to no avail . Counsel then Asked trial judge wether the petitioner would be required to **plea** .

The trial judge stated : " [T]hat he **certainly will.**" the petitioner therein pleaded **not guilty** . And was held to stand **[T]rial with** the [Q]uestion of **[J]urisdiction [u]nsettled** . Yet ' Acting * U.S. Attorney wished to **Amend** the **[A]lleged [I]ndictment Once Again** . This time to include the name Allen Morlsey. (which petitioner denied as well) On the [Q]uestion of **[S]ubjectmatter Jurisdiction** , The trial judge reasoned that it was a [S]imple question for **the Jury** ! Whether the **[P]etitioner** was the **Person** Indicted by the [G]rand Jury ? Yet ' The trial judge **Instructed** the jury that the petitioner; Had ' infact been indicted **by the grand jury** ' and furthermore, For A Number of charges ! Petitioner **Argues** ' That **when trial judge charged** the [J]ury Likewise (That the petitioner [W]as **known As** [R]aleek , Also **Known As** [B]aldhead) He **Became A [W]itness** in the petitioners trial . In **[V]iolation** of federal rules of Criminal Procedure : **RULE 605** ; Which states :

" [T]he judge presiding at a trial may not testify in that " trial as a witness ; [K]now objection need be made in order to preserve the point ; (**New Jersey evidence rule 42**)

" [T]he rule provided an **[Automatic][Objection]** , To require an actual objection would confront the opponent with a choice between not objecting , with the result of allowing the testimony , and objecting with the probable result of excluding the testimony but at the price of continuing the trial before a **judge likely** to feel that his **integrity** had been attacked by the objector."

Coupled with the fact that The [Q]uestion of [S]ubject Matter **Jurisdiction** had not been **resolved** ' And Further that the [P]etitioners **[O]nly Defense was that** [H]e was **Not Known** / [N]or **Indicted** / As Allen Morlsey , Raleek or Baldhead . Inwhich Acting * U.S. Attorney had **Amended** the Alleged Indictment to **Include ..** So [T]rial Judge could not **create** his **[O]wn [J]urisdiction** ' and furthermore Attempt to be a **witness to legitimize it**. SEE **EXPARTE McCARDLE**, 7 Wall 506, 514 , 19 L.Ed. 264 (1869);

" [W]ithout Jurisdiction the court cannot proceed at all in Any " cause , jurisdiction is the power to daclare the law, and wh- en it ceases to exist the [o]nly function remaining to the co- urt is that of announcing the fact and dismissing the cause."

Also SEE MANSFEILD . C.L. M.R. Co. Vs. SWAN , 111 U.S. 379, 382, 28 Led. 462, 4 Sct. 510 (1884);

" The [R]equirement that jurisdiction be established as a thres- " h hold matter "Springs] from the nature and limits of the jud- icial power of the united states." and is "inflexible and [W]- ithout **exception.**"

In the instant case before this **honorable judge** , petitioners alleged indict- ment [I]s a **creation** of one Acting * U.S. Attorney who is not **even Licensed** to Practice Law In the court room that the petitioner was on trial for his [L]ife. Chirstine Hamilton **Hadnt** even Attempted to go before a grand jury so that **cha- rges** could be [M]ade . A.T.F. Department Secured Alleged **Indictment** against' Fletcher Johnson for conspiring to sell guns **without** the proper paper work , as Fletcher Johnson **was** a federally **licensed** firearm dealer . SEE EXHIBIT # **2(A)** After alleged indictment had been secured by A.T.F. A case was Submitted to The Honorable U.S. Attorney Dedrick of Raliegh North Carolina SEE EXHIBIT # With A note that AUSA **XXXXXX** is aware that on **july 6th 1993** fletcher johnson / Along with his Co-conspirators had been indicted for **18 U.S.C. Section 371** Co- nspiring to **sell [F]irearms** wich had the **serial** numbers [O]bliterated . [A]nd **18 U.S.C. Section 924 (C)** Using a firearm during a drug trafficking crime . The letter went on to say that [t]his case should be forwarded to [H]er [T]his Letter from the A.T.F. is [D]ated **Aug 18th 1993** ' almost a month after **indictment** had been secured . [O]n **Sept 23rd 1993** the petitioner was arres- ted by A.T.F. Agents who said that they had been given a tip by **unreliable** in- formant , who told them that the guy **they** were looking for was in this apar- tment ' And that his name [I]s [R]oy Lee ? within the apartment when ATF Arrived were **(5) Five African American Males** / And **(1) One African American** ' Female .

[A]gents will testify at petitioners trial that some-one motioned ' that the petitioner was the one that [T]hey(A.T.F) were looking For (**inside the apartment**). [Y]et ' **alleged** indictment [I]nadequately described the [F]ictitious [J]ohn Doe (The **person**) no [Description] / Not by Sex / Race / Age/ Tattoos home address / phone number / height / weight /scars / facial hair '/ or lack of facial hairs ' **[N]othing !** And agents , and police officers (**All**) **Testify** that they had never **[S]een** The Petitioner ' the **alleged [J]ohn Doe ?** freedom-of information (**F.O.I.**) request [F]rom **A.T.F.** will further Confuse **[A]ny** Concept that could be [H]elpful ' As they were **[N]ot** even [S]ure "who" they were Looking for . SEE EXHIBITS # (**G**) but one thing is certain ! **who ever** they were looking for ' had **not been Indicted .** Yet' the alleged indictment had ' been broadened on [N]umerous occassions . [I]nfact ' the [J]ohn Doe had been Such a **[C]reation .** So without **[A]ny Witnesses** before the [G]rand Jury The Trial Judge Allowed Acting * U.S. Attorney to [I]nclude Other parties that had not been indicted . While **amended [I]ndictment** [I]s signed by Acting * U.S. Attorney **Christine Hamilton** , And while she Argued case as if she had Secured [I]ndicment ' [T]he Truth [I]s ' that **She was "Never"** involved in any investigation [B]efore the **Grand Jury** . So when [T]rial Judge **[A]bandoned** the [T]rial ' Leaving the petitioner before A [J]ury ' **With** Unlicensed Attorney **who** had [B]roadened indictment to [I]nclude **Charges** that were not **Made by** [G]rand Jury ' (O)r **even** Considered by [G]rand Jury ! And the petitioner was Called on to Answer [I]ndictment [T]hus charged , The restrictions which the **[C]onstitution placed** upon the power of the court , in regard to the prerequisite of an indictment ' [I]n [R]eality , **no longer exist .** SEE RUSSELL Vs. UNITED STATES, 369 U.S. 749 (1962); Yet ' [I]f' the [T]rial judge **Abandoned** the [T]rial **because** he was without the [J]urisdictional **Authority** to **entertain** the Litigation , [T]rial Judge should have **dismissed** the indictment Or Cause .

SEE UNITED STATES Vs. PROVIDENCE JOURNAL Co., 485 U.S. 693, 108 SCT. 1502 ,
99 L.Ed.2d. 785 (1988);

" As it is well settled that where an Attorney [P]urportedly"
representing the united states is without **authority** to do
so , The Court **must dismiss the action.**"

Although ' The [S]upreme Court has Often **Reminded Us** That Judges Are Officers
Of there Respective [S]tates ' The petitioner Argues that he is **Actually** ' and
Factually innocent . And [F]urther ' That A United States District [J]udge h-
as **Attempted** to pick up the [D]ropings of the United States Attorney Office w-
ho ' has [A]dmitted , that the petitioner has [N]ot been indicted ! And (10)-
Ten Years [L]ater In The Middle District Of Pennsylvania ' The petitioner is
[S]till being [B]ogged down by procedures **that** [A]cting * U.S. Attorney was V-
ery much aware the petitioner would take **years** to understand
[T]he petitioner **further** argues that based upon the hertofore described fact-
ors and contentions ' That the petitioners case **represents [E]rrors of Cons-**
titutional [D]emensions , that are so manifestly "A" [V]iolation of the petit-
ioners fundamental [R]ights ' As to be Construed As A " **Manifest [I]njustisce**"
which the [S]upreme Court described In HILL Vs. UNITED STATES, 368 U.S. 424
(1962);

" [A] fundamental defect which inherently results"
in a [C]**omplete** miscarriage of [J]ustice , [O]r
an Omission that is inconsistent with the rudim-
entary demands of fair procedure **i.d.**

ARGUMENT # 2.

ACTING * U.S. ATTORNEY CHRISTINE HAMILTON IS NOT A
LICENSED ATTORNEY IN GOOD STANDING OF BAR OF NORTH-
CAROLINA , [O]R SUPREME COURT OF NORTH CAROLINA IN
VIOLATION OF 28 U.S.C. SECTION 530B.

In the instant case before this Honorable Judge ' Acting U.S. Attorney [W]as [N]ot Authorized to [P]ractice Law in the state Of North Carolina . SEE EXHIBITS # (E) . As it is violative of both state and Federal law for any individual to [P]ractice Law in the state of North Carolina , [O]r the fourth circuit of Appeals Without A License .[/4.] which explains [W]hy Imposter' was [N]ot Attorney of Record before Fourth Circuit' [O]r Oral Argument . [yet she continued to keep A.T.F. Department abreast of updates , and changes concerning the case] SEE EXHIBIT # (F) . Yet the [P]etitioner was not [A]fforded such protections in the court where [H]e was on trial for his Liberty . SEE BOLLING Vs. SHARP, 347 U.S. 497 , 499, 74 SCt. 693, 694 , 98 L.Ed. 844 ;

(CHIEF JUSTICE WARREN)

" The Fifth Amendment which is applicable in the district " of columbia , does not contain an equal protection clause as does the Fourteenth Amendment which applies only to the states , But the concepts of equal protection - and Due Process both stemming from our American ideal - of fairness , Are not mutually exclusive ;

" [T]he equal protection of law ' Is a more explicit safeguard of prohibited unfairness than the [D]ue [P]rocess."

[/4.] SECTION 84.4, of north carolina general statues provides that :
 "except as otherwise permitted by law , it shall be unlawful for any person... except active members of the bar of the state of north carolina admitted and licensed to practice as attorneys at law , to appear as attorney or counselor at law in any action or proceeding before any judicial body..."

CHAPTER 1, SUBCHAPTER [A], Section .0201(a)-(c) of rules of north carolina state bar provide that :

(a) members of the north carolina state bar shall be divided into two classes ; active members and inactive members .

(b) active members: active members shall be all persons who obtained a license entitling them to practice law in north carolina , including all persons serving as justice or judge of any state or federal court in this state

Also SEE 28 U.S.C. § 5303 (2003) Ethical Sandards for Attorneys for the Government . [/5.] Although the record will reflect that **Imposter** had Violated the petitioners [C]onstitutional rights in a number of [W]ays '.. It would not matter if there were [N]o **evidence** on the record that the bar **examination** is , in fact , a **good** way of judging [C]ompetence . SEE **HELLER Vs. DOE**, 509 U.S. 312, 320, 125 L. Ed.. 2d. 257, 113 SCt. 2637(19-93).; (noting) " that a classification "

" [M]ay be based on rational speculation unsupported " by evidence or empirical data." (citation omitted)

In the case before this **Honorable Judge** , Bureau of Alcohol-Tobacco and-Firearms of 4530 Park Road ,Suite 400, Charlotte NC. 28209 [I]nvestigated Case # 13530 93 2504 L . [A]fter [S]ecuring [I]ndictment . A.T.F. Submitted The Case For Prosecution ' To [U]nited States Attorney **James R. Dedrick** Of **Raleigh** North Carolina . SEE **EXHIBIT # 2(A)**. which has been released to the petitioner via **F.O.I.** (A.T.F.)[W]hich states the following:

"Dear XXXXXXX the enclosed **Criminal** case report is **Subm-**"
itted for prosecution regarding [V]iolations of **Federal**
Firearms [L]aws by **Fletcher Johnson , et als.**

"from the fall of 1991 To May 1993 , Johnson , then a **Fe-**"
derally Licensed firearms [D]ealer , [I]llegally **distrib-**
uted over 1000 firearms to [K]nown Drug traffickers and
convicted felons [I]n the Johnston [C]ounty, North Caro-
lina area .

" [T]his Case has been discussed [W]ith Assistant United-"
States Attorney XXXXXXX And [S]he is [A]ware that on '
july 6/93 , the **defendants** were **indicted** by a [F]ederal
[G]rand [J]ury.

" [W]e [S]uggest this [R]eport be [F]orwarded to [H]er "
Attention .

SINCERELY YOURS , XXXXXXXXXX
SPECIAL AGENT IN CHARGE.

Dated 8/16/93 8/16/93 8/17/93
initiator / reviewer / reviewer

[I]ndictment [S]ecured bt A.T.F. [C]arged Two (2) Vidlations. 18 USC Section § 371 (Conspiracy to sell [F]irearms which had there serial numbers obliterated) And 18 USC Section § 924(C) (Using a Firearm in relation to a drug trafficking crime.) Both of which have a statutory Five (5) year max if convicted . [A]fter indictment had been secured for two (2) charges , Under Case/ investigation # 13530-93-2504-L. ' Invsetigation # 13550-93-4565-T. , was submitted on [J]uly 20th 1993 by Agent fannelly of the Raleigh A.T.F. Division (14 Days [A]fter the [A]lleged indictment was filed in Court] As Agent fannelly - and Dective Moss* had began a [B]uy and [S]ell sting Operation with [L]icensed firearm dealer [F]letcher Johnson . [B]ut with another ' [O]bjective [D]rugs ! Fletcher johnson by wire/ taped conversation ' made controlled buys of drugs in the presence of investigating officers [N]ote that the petitioner was [N]ot indicted for any of the controlled buys' SEE EXHIBIT # (G). (Detention hearing) As The petitioner was never seen or heard by investigating officers . Infact , Fletcher Johnson advised Officers that he had sold [G]uns to a gentlemen named [R]oy Lee . Who *Detectivemoss thought sounded close [E]nough to the name [R]aleigh ' a [p]erson the R.P.D. was very interested in being acquainted with (yet have never been able to I.D) yet fletcher would tell them the address of the [R]oy Lee that he Sold Firearms . SEE EXHIBIT # 1.(G). yet nothing had come of it .(but fletcher was still asked by Dectective moss* to keep the name out there for the raleigh , Police Department.)

Footnote /4. continued :

Federal Rules of Appellate Procedure : Rule 46 (a) , Provides that :

" Any attorney who has been admitted to practice " before the supreme court of the united states, or highest court of the state, or united state district court ..., is eligible for admissions to the bar of the court of appeals."

During a taped conversation between fletcher johnson and [S]ting target **Andrea Hendricks** . Fletcher [Q]uestioned whether Hendricks **Knew** [R]oy Lee continually. and andrea hendricks would continue to assure fletcher that he **didnt** know any-- one by the name of roy lee . Next fletcher would [Q]uestion hendricks concerning [W]ho he would be getting the **drugs** from that fletcher was now purchasing ? Andrea would state **"Clearly"** That drugs were coming from a guy named[**keith**], and Assures Johnson that he **doesnt** Know (Keith). At some other point in time Andrea Hendricks (hereinafter"**hendricks**") would ask fletcher whether he was talking about [R]aleek ? and fletcher johnson would say " **Yèah** " "thats who im talking about" Do [Y]ou know [H]ow to get in contact with [H]im ? Hendricks answered that he **did not** ! After fletcher asked hendricks whether he [K]new where [R]aleek lived or his **Phone number** . Hendricks answer was that ' He **did not** ! Fletcher johnson then asked ? When was the **last** time [Y]ou **saw him** (Raleek) Hendricks answered ' I **saw him** at a [C]lub a while [B]ack . Yet'this tape is the [O]nly **tape** not [P]layed before the Jury (infact ' its - the **only time** the name **raleek** had been spoken ' [U]ntil **detective Ray Moss** * Spoke with **hendricks** [A]fter he was arrested 6-14-93 for selling 4½ ounces of crack cocaine to fletcher johnson.)[note also- detective **moss*** had never seen the [P]hantom [R]oy Lee [n]or the [R]aleigh ' muchless [R]aleek . [N]or had Acting * U.S. Attorney **Christine Hamilton** . On July 6 1993 Alleged was fictitiously carbon copyed ' and sent to USA, USPO , PTS, USM J. FOX , J. DIXON , counter calender file . SEE DOCKET . On July 8th 1993 [U]nknown person submitted **Memorandum**: [R]equesting issuance of **arrest warrant** , For **Lori Anne Perry Hendricks** , and [J]ohn Doe . SEE DOCKET SHEET , Both Alleged defendants wanted for [C]riminal [I]nformations , of which Lori Anne Perry Hendricks **plead - guilty** . (21: 856(a)(1)[maintaining a place for purpose of distribution)

[n]ote - Lori Anne Perry Hendricks home was forfeited with respect to count (1) one of alleged indictment , pursuant to title 21 U.S.C. Section 853(a) SEE EXHIBIT # (H) . On July 8th 1993 (same day) [C]lerk of court (David W. Daniel) Allegedly Issued a Warrant for [J]ohn Doe. * further ' issuing Original to USMJ w/cc Of Indictment & cc: warrant to USA. On Sept. 9th 1993 [U]nlicensed Attorney Christine Hamilton moved the court by motion to Amend the [I]ndictment , stating therein ' that it was a technical error in the Indictment , Also asking that a [C]ertified [C]opy of indictment be forwarded to the District Attorneys Office . SEE DOCKETING SHEET - also Motion to Amend EXHIBITS # . Where [I]mposter assures the Court that the defendants would not be [P]rejudiced , As they were [A]ware that prosecution planned on ' charging [W]ire Fraud ? SEE MOTION TO AMEND # (1).

On Sept. 23rd 1993 (14 Days Later) The Petitioner was arrested in an Apartment Complex on Kid Row St. Where Agents Testified that they were given a - [T]ip from [U]nreliable informant that they had never used before . [W]ho ' Told them , That the person they were looking for frequently stopped by On Oct. 2nd. 1993 , the Warrant that was ficticiously [I]ssued on Sept. 8th 1993 ' was Filed in court for the [F]irst Time Stating [J]ohn Doe Aka Raleek Aka [B]aldhead . SEE EXHIBIT # (4). Yet during The Petitioners Trial ' [A]cting * [U]nlicensed U.S. Attorney [W]ould move the Court to [A]mend Alleged Warrant. The [R]ub is ' Even for the sake of argument , [I]f' the Grand Jury Did indict one defendant [A]s John Doe ! there was not a Scintilla of evidence before the the grand jury ' that the petitioner was infact' intended to be that john doe . Infact during the petitioner Unlawful Trial , unlicensed * Acting U.S. attorney Chritine Hamilton' stated that it was [S]he who asked agent fannelly and detective moss * (who had never seen [R]oy Lee / [R]aleek / [R]aleigh) neither of which having been before the grand jury concerning the petitioner.

[T]o make **sure** that they had the [R]ight [P]erson ? After Alleged **indictment** had been [F]icticiously **filed** almost three (3) months prior to this date .
[T]hus [U]nlicensed acting* U.S. Attorney Christine Hamilton **Unconstitutionally [A]mended** the Indictment To include person that she [K]new had not been Indicted [B]y grand jury . SEE UNITED STATES Vs. ROSI, 27 F3rd. 409, 414 - (9th Cir. 1994);

" at common law ' most valuable function of the grand " jury was to stand between the prosecutor and the accused , and determine whether the charge was-founded upon credible testimony".

HALE Vs. HENKEL, 201 U.S. 43,59, 26 SCt. 370 , 50 L.Ed. 65 (1906) ;

" There is [every reason to believe that the constit- " utional grand jury was intended to operate substantially like its english progenitor."

ALSO SEE COSTELLO Vs. UNITED STATES, 350 U.S. 359, 362, 76 SCt. 406, 100 L.Ed. 397 (1956); EXPARTE McCARDLE, 7 Wall 506 ,514, 19 L.Ed. 264 (1896); HURTODA Vs. CALIFORNIA, 110 U.S. 516. (1884); RUSSELL Vs. UNITED STATES, 369 U.S. 749 8 Led 2d. 240 , 82 SCt. 1038 (1962); STIRONE Vs. UNITED STATES, 361 U.S. 212, 219-19 (1960);

" the [F]ifth Amendment thus requires that a defendant" be convicted [O]nly on charges considered and found-by the grand jury."

But See WOOD Vs. GEORGIA, 370 U.S. 375, 390, 82 SCt. 1364 , 1373, 8 L.Ed. 2d. 569 (1962)(Holding);

" The grand jury serves the invaluable function in our" society of standing between the accuser and the accused To determine whether a charge is founded' upon reason ' or was dictated by an intimidating power or malice and personal ill will."

[5/.]

28 U.S.C. Section § 530B STATES:

- (a) " An attorney for the government shall be subject to state laws " and rules and local federal court rules, governing attorneys in each state where such attorney engages in that attorneys-duties , to the same extent and in the same manner as other-in that state."

[T]hus petitioner [D]elcares ' As did the [S]upreme Court In BERGER Vs.

UNITED STATES :

" That the united states attorney is the repres-
entative not of an ordinary party to a contro-
versy , but of a sovereignty whose [O]bligation
to govern impartially is [C]ompelling as its -
Obligation to govern at All."

The fact that the petitioner [N]ow **rots** away in a prison cell ' for a
Crime that he has not committed , [N]or was **Indicted** for ' Is [U]nque-
stionably Much [M]ore that A **[M]iscarraige of [J]ustice , But infact'**
A **[C]rime** . Furthermore , it does not matter that there is no evide-
nce on the record ' that the **bar examination** is, in fact, a good way -
to judging [C]ompetence . SEE HELLER VS. DOE, 509 U.S. 312, 320 ,
125 L.ED. 2D. 257 , 113 SCT. 2637 (1993); **[A]RTICLE IV** Clause 2 of
United Sates Constitution provides that the Citizens of each state sh-
all be entitled to all privileges and immunities of Citizens in the S-
everal Sates ; In SAENZ Vs. ROE, 526 U.S. 489, 143 L.Ed. 2d. 689 ,
119 SCT. 1518 (1999); [T]he [S]upreme Court applied the privileges -
or Immunities clause ' in a right -to- travel context ' to hold that '
Taverlars **deciding** to become permanent residents of a new state **enjoy**;

" The [R]ight to be treated like other Citizens"
of that **State** ." i.d. at 500-07.

As it [I]s well settled that where an Attorney ' [P]urportedly repres-
enting the united states is without [A]uthority to do so ' the court ,
Must dismiss the action . SEE UNITED STATES Vs. PROVIDENCE JOURNAL -
Co , 485 U.S. 693 , 108 SCT. 1502. 99 L.ED.2D. 785 (1988); . As U.S.
Attorney was not Authorized to **present** case .

[5/.] footnote continued:

(b) " The attorney general shall make and amend rules of the dep-"
artment of justice to assure compliance with this section."

As Acting * U.S. Attorney Christine Hamilton Was/ and **is not** A Licensed Attorney . SEE **EXHIBITS # (E) 1-4** . The court was without subject matter Jurisdiction to entertain the Cause . Further , **Jurisdictional** claims may not be procedurally **barred** , As they go to the subject matter of the courts jurisdiction ' [T]o even [D]elcare the [L]aw . SEE EXPART RTE McCARDLE , 7 Wall 506 , 514, 19 L.Ed. 264 (1869); ALSO MANSFELD - C.L. .M.R. Co Vs. SWAN, 111 U.S. 379 , 382, 28 L.Ed. 462, 4 SCt. 1510 (1884);

" The requirement that jurisdiction be established " as a thresh hold matter "Springs] from the nature and limits of the judicial power of the united states [and is] [**enflexible**] and [**with out - exception**]. "

Furthermore , even [I]f' this Honorable Judge found that Alleged indictment **secured** by A.T.F. Department (of Charlotte Division) ' which charged **18 U.S.C. Section § 371 Conspiracy/** and **18 U.S.C. Section § 924 (C): [W]ere [V]alid !** SEE EXHIBIT # ~~(2)(A)~~.¹. Petitioner **Argues** that **Title 21 U.S.C. Section§ 846 Conspiracy /** Can-not properly be **laid** under [Conspiracy to defraud clause of **18 U.S.C. Section §371** . SEE BRIDGES V. UNITED STATES , 346 U.S. 209, 97 L.ed. 1557, 73 SCt. 1055. ; US App. LX. 3890 9th Cir. 2002 ; (Where the court compels the conclusion that)

" [A] conspriracy to file false statements' may not " properly be laid under conspiracy to defraud clause of 371."

Surely , the indictment clause must be understood to mean that the defendant **may not** be exposed to an "**Infamous Punishment**" unless the Grand jury **finds** probable cause to believe that [H]e [D]id that which the law requires him to have done before [**A]ny character of infamous** punishment may be imposed upon him ; SEE EXPARTE WILSON , 114 U.S. 417 , 429 , 5 SCt. 935 . 941, 605, 607, 48 L.Ed. 882 (1904) .

~~Footnote 15/1 continued next page.~~

[B]ecause of the seriousness of the criminal penalties , and because Criminal punishment usually represents the **moral** condemnation of the community . Legislatures ' and [N]ot the court should define criminal activity ; SEE UNITED STATES Vs. BASS, supra 404 U.S. at 348, 92 S.Ct. at 523 . While certainly not dispositive to cases of federal jurisdiction ' , The petitioner would like to direct the courts attention to a recent **Illinois State Case** : PEOPLE VS. DUNSON, Ill. App. Ct. Slip. Op. No. 2-99-0893 , 10/24/00 , 68 Cr1. 147 . In which the state Appellate courts would **Rule** that the [P]articipation in trial by **prosecuter** [N]ot licensed to practice Law In [I]LLINOIS"[R]equired" that the trial be **deemed null-and-void.**; On the question of [P]rejudice , the court decided that a defendant in such a situation **need not establish** prejudice ' As ;

" The participation of an unlicensed prosecutor "
[S]o taints the proceedings that this fact alone ' is prejudice enough." i.d.

BUT SEE UNITED STATES Vs. GLEN F. STRAUB, Case # 5:99-CR-10 (Judge Stamp) (Order) filed at Wheeling W.V. June 14th 1999 in Northern District of W.V. SEE **EXHIBIT #** . Where U.S. District Judge Fredrick P. Stamp Jr. by **Memorandum/ Opinion /** and [O]rder ' [D]isqualifys Acting * U.S. Attorney , **Micheal Stein** from ' further practice in the state of West Virginia. [f]or non copliance with **28 U.S.C. Section § 530B**. (Bill H.R. 3386) Introduced by The Honorable Gentlemen from Pennsylvania (**MR. McDADE**). Which the petitioner incorporates herein as evidence to support argument (House discussion .

Footnote [5/] continued : 28 U.S.C. Section § 530B.

(c) " As used in this section , the term for the government includes" any attorney discribed in section 77.2(a) of part 77 of title of title 28 of the code of federal regulations and also includes any independent counsel or employee of such counsel , Appointed under chapter 40 [28 U.S.C. §§ 591 et seq..]"

Also See HUCKELBURY V. STATE , 337 So. 2d at 402 , 403 .

" Where a Florida appeals court [R]uled that defendants "
[C]onviction must be Vacated where he had been repr-
 esented by one [Pearce], a person who had recieved -
 a Law degree and passed the bar examination , **but** who
 has been **denied** admission to the bar because he **fail-**
ed to meet the **[m]oral standard** for [A]dmission."i.d.

As Acting * U.S. Attorney * Christine Hamilton **was not** authorized to
 represent the **United States** in the matter pending before this court '
 [N]or and **Authorized** officer of the [C]ourt . Because she was **Allow-**
ed to introduce **evidence** with the **[I]ntegrity** of the **United States** G-
 overments [S]eal , And **[A]dvantages inseprable** . The Petitioner '
 Further Argues , that **[P]urjured** [T]estimony (inwhich imposter int-
 roduced)' (and further **[V]ouched** for its **[R]eliability**) Can-not '
 Be **Scrutinized** with **[M]oral Certainty** ' [W]hen there has been **[N]o** '
[E]thical , [O]r **[M]oral Test** To [B]ase Ones Cerainty !

" [W]ithout ' **Prejudicialy assuming** "
 that the [g]overments Seal can cure all [D]-
 oubt .

yet ' if this assumption could [E]ver excepted . and it **has** ' then
 the petitioner [T]rial **Suffered "Structural Defect"** that can-not be
 Cured under harmless error **standard** . SEE ARIZONA Vs. FULMINANTE,
 111 SCt. at 1256 . **i.d.** 499 U.S. 279 at 309 ;

" [T]rial error, the **majority ruled** where "
 subject to harmless error analysis
[S]tructural [D]efects where not **since** '
 they [D]efy analysis by harmless error -
 standards ." **i.d. at 309,** 111 SCt . at
 1265 .

As Acting * U.S. Attorney **Tainted** the credibility of those who [Q]-
 uestion the credibility of the case inwhich she [F]iticiously pre-
 sented .

Having [F]irst hand Knowledge that the case inwhich she (Christine - Hamilton) **presented** was concieved in [L]awlessness . While [A]m-
ending the [I]ndicment / [S]uppressing evidence / [A]ltering Docume-
nts . SEE EXHIBITS # . [A]nd **Given** Free reign By [T]rial
 Judge ' who was **Asleep** at the switch , for even **Allowing** such a case
 to go forward ! [W]hen he ' himself , was not able to [D]ecide whe-
 ther the petitioner was indicted by [G]rand [J]ury . SEE UNITED STATE
Vs. JAY, 713 F.Supp. 377 (N.D.Ala. 1988). During the petitioners
 [M]ock Trial . Acting U.S. Attorney ' [M]ade the petitioners [O]wn
 Counsel A [W]itness Against The Petitioner . As the petitioners **O-**
nly Defense was that of [I]dentity Acting U.S. Attorney
 Instructed Witnesses who Said [R]oy Lee on the transcripts (Of Tapes
 that were not played because counsel was not aware of the **existence**
 " Which Acting U.S.Attorney **Denied** ' Calling Counsel Robert Cooper a
 Bare face [L]ie) " To Say that they Said [R]aleek **before the Jrury**"
 And to Prove that this was a [N]ormal Occurence , She Reminded the
 Jury ' that Counsel Robert Cooper (petitioners counsel) [H]as been C-
 alling Agent Fannelly ' **Agent Fannally** , And [S]ometimes [F]inally .
 Well surely this could be [I]solated . Yet Coupled with the [F]act ,
 that Acting * U.S. Attorney Also **Advised** the [J]ury that the petiti-
 counsel Likewise **Calls** His [C]lient [R]aleek ' Which so happens '
 To be the [V]ery thing Defense was Supposed to be [P]rove was not
 the Case ! Although the fourth Circuit will recognise that there
 was an Conflict of interest ' **They would rule that the petitioner '**
[C]aused it . even when Counsel Robert Cooper refused to file the
 Petitioners [O]bjections to the P.S.I. Report .

[I]ronically ' [A]fter trial petitioner would come to realize that Acting * U.S. Attorney was **very much** aware of the conflicting **names** [O]f Alleged , [J]ohn Doe . SEE EXHIBITS # (G) . Infact freedom of information [R]equest (F.O.I.) to A.T.F. Department would reveal yet [A]nother inconsisten-
 ntcy ! The [N]ame [R]aleigh (As in the Capital) SEE EXHIBITS # (G) . [C]onsequently , this Court has ruled in accordance with Supreme Court -
 precedent , " That nondisclosure by prosecutor [V]iolates Due Process : ;
 SEE UNITED STATES Ex rel. ALMEIDA Vs. BALDI , (Pa.) 195 F2d. 815 ;
UNITED STATES Ex rel. THOMPSON Vs. DYE , (Pa.) 221 F2d. 763; MONNEY Vs . HOLOHAN , 294 U.S. 103, 112, 79 L.Ed. 791, 794, 55 Sct. 340, 98 ALR 406 ;
PYLE Vs. KANSAS , 317 U.S. 213,215,216,87 L.Ed. 214,216, 63 Sct. 177 ;
 The [T]hird Circuit in BALDI case construed PYLE Vs. KANSAS to mean that

" The suppression of evidence favorable to the accused was "
 [I]tsself sfficent to amount to denial of Due Process ."

In NAPUE Vs. Illinois , 360 U.S. 264,269, 3 L.Ed.2d. 1217, 1221, 79 Sct. 1173 ; The Supreme [C]ourt extended the test formulated in mooney when
 it stated : " The same results obtained when the state ' Although"
 not soliciting false evidence , Allows it to go un-
 corrected when it appears ." i.d.;

As [F]letcher Johnson [F]irst advised agents that he sold firearms to Troy
 [LNU] SEE EXHIBITS # 6-8 . And then [R]aleigh - and then [R]oy Lee ,
 And further [R]aleek and [B]aldhead . SEE EXHIBITS # (G) . In light
 Of the petitioners [O]nly [D]efense (IDENTITY) This Was Substantial !
 SEE - ALCORTA Vs. TEXAS , 355 U.S. 28,2 L.Ed.2d. 9, 78 Sct.103; WILDE Vs. WYOMONG , 362 U.S. 607, 4 L.Ed. 2d. 985, 80 Sct. 900. Cf. DURLEY Vs. MA-
 YO , 351 U.S. 277, 285, 100 L.Ed. 1178, 1185, 76 Sct. 806 (dissenting opi-
 nion); And BRADY Vs. MARYLAND , 373 U.S. 83, 87, 83 Sct. 1194, 1196,10
 L.E.D. 2D. 215(1963); GIGLIO VS. UNITED STATES , 404 U.S. 150,154, 92 Sct.
 763 , 765, 31 L.Ed. 2d. 104 (1972);

" Favorable evidence [includes] evidence affecting"
the credibilty of government witnesses ." i.d.

And Also when the evidence is used which the government knows **creates a false** impression . SEE MILLER VS. PATE , 386 U.S. 1, 87 SCt. 793, 17 L.Ed. 2d. 737 (1967) . During the petitioners trial ' Acting U.S. Attorney would explain the conflicting **names** given by goverment - witnesses ' [A]s Errors in speech . And at other times , she would j-
ust [A]llow them to denie that they had said anything. SEE HARMIC Vs. BAILEY , 386 F2d. 390, 394 (4th Cir. 1967);

" [T]estimony is considered false when it is likely"
that a jury would understand the witness to have-
said something that the prosecutor **knew** to be fa-
lse ." i.d.

Yet ' Acting * U.S. Attorneys [L]ast Act is Deserving of [P]ermanent ' [D]isbarring from ever practicing law As Acting U.S. Atto-
rney **Christine Hamilton** [U]nlawfully introduced the petitioners [S]e-
aled prior adjudications for the sole pupose of making the petitioner
eligible for Sentencing Guidelines 4.B.1 In which the petitioner,
recieved A [L]ife Sentence . SEE **EXHIBIT # I . I** . where the petit-
ioner was Adjudicated **youthful Offender** . (Youthful offender under -
N.Y. State Law C.L.P. 720.10 - 720.35) And now sits in the killi-
ng feilds of the United States **Maximum** prisons . Yet ' while yeild-
ing the [A]bsolute [P]ower of the United States [G]overment ' Acting *
U.S. Attoreny [C]aused the U.S.P.O (P.S.I) to record **youthful adjudi-**
cations ; [T]hat [N]ew [Y]ork [S]tate [C]ourt **Was-not at Liberty** '
to release under **Statute** . Which the [P]etitioners [O]wn Mother cou-
ld **not retrieve** , Without Noterized [C]onsent ! So that it might -
be introduced in the matter before this Honorable Court . As the pe-
titioner [I]s **Actually** innocent of 4.B.1. enhancement as well.....
but was never allowed to object to P.S.I. , As counsel for the petit-
was intimidated by acting u.s. states attorney as well.

ARGUMENT # (3).

THAT FEDERAL CONVICTION / SENTENCE DEFECTIVELY
ENHANCED BASED ON ACTUAL INNOCENCE OF CARRIER
CRIMINAL STATUE § U.S.S.S.G. 4.B.1.

Petitioner herein asserts that there is no constitutional right to [Y]outhful Offender Status , but such treatment is entirely **gratuitous** [C]reature of legislature ' Subject to such conditions as Legislature may impose without Violating Constitutional guarantees , And thus , Classification [I]s ' [C]loaked with presumption of Validity which may be Overcome [O]nly if grounds can be conceived to Justify it . SEE PEOPLE Vs. DRAYTON, 1976, 39 N.Y.S. 2d. 1, 350 N.E. 2d. 377 . In the instant case before this Hon. Judge ' The petitioners "**Enhanced**" Sentence was **Defectively** Based upon N.Y State C.P.L. 720.35 (Youthful Offender Adjudication) Which States :

- (1). " A youthful offender adjudication is not a judgement of conviction " for a crime or any other offense , and does not operate as a disqualification of any person [S]o adjudged to hold [p]ublic office or public employment or to receive any license granted by public [A]uthority .
- (2). " [E]xcept where specifically required or permitted by statute or " upon specific [A]uthorization of the court , [A]ll official records and papers , whether on file with the court , a police agency or the division of criminal justice services , relating to a case involving a youth who has been adjudicated a youthful offender , [A]re [C]onfidential and may not be made available to any person or public , or private agency , other than an institution to which such youth has been committed.

FACTS INCORPORATED

On Oct.28th 1983 , the petitioner was therein [A]djudicated Youthful Offender [S]tatus For Indictment # [771-82] , Which was consolidated with ' indictment # [1604-83] for trial and sentencing purposes . SEE EXHIBIT # I.2 . However , Acting * U.S. Attorney [M]aliciously ' Used said ' Youthful Offender [a]djudications , As adult criminal convictions for Career Criminal **enhancement** purposes ' pursuant to 4.B.1. of the Sentencing Guidelines . Consequently , Acting * U.S. Attorney Know [O]r should have [K]nown ' U.S.S.G. [E]xpressedly States :

§ 4A1.2 . (C).2. ;

" Sentencing for the following prior offenses and offenses" similar to them , by whatever name they are known are never counted . ;

[R]evelant [P]art: ;

" Juvenile Status Offenses."

The definitions in § 4A.1.2. [G]overn the Computation of the Criminal History points . A [S]entence imposed for an offense committed prior to the Defendants eighteenth birthday is counted under this item [O]nly if it resulted from an [A]dult Conviction , Or [I]f' imposed within five (5) years of the defendants commencement of the current offense . SEE 4A1.2(d).

Furthermore , under **derivationary dispositions** ' 4A1.2(F) [U]nambiguously [E]xempts [J]uvenile dispositions . As to **avoid** disparities from jurisdiction to jurisdiction , Concerning the age at which a defendant is considered a "juvenile" , The sentencing [C]ommission [S]tatutorily **Defined** 4A1.2.(d) to [A]pply to all offenses committed prior to the age eighteen .

LAW

THE LAW

" [N]o youth [A]djudicated as youthful Offender can be **denominated** A " criminal by reason of such **determination** , Nor can such determination be **[D]eemed** a **[C]onviction** ." i.d. SEE PEOPLE Vs. Y.O., 2404 , 1968 , 57 Misc. 2d. 30, 291 N.Y.S. 2d. 510 ; Also See GOLD Vs.. GARTENSTEIN , 1979 , 100 Misc. 2d. 253, 418 N.Y.S. 2d. 852 ;

" Youthful offender treatment is not a [J]udgement " of conviction for crime ." i.d.

" [P]rimary advantage of youthful offender treatment [I]s **avoiding** the stigma of practical conditions which accompany a criminal conviction ; Also , **All book** records and papers must be sealed ' and are **[O]nly** Available under special circumstances ." i.d.

Petitioner further argues that ' the reporting by local criminal courts to the bureau of justice court funds of the [O]riginal offense charged , and the offense for which the defendant was tried and ' convicted , **does not** violate the confidentiality of the courts records and papers because neither the defendants [N]ame nor address is **revealed** . Op. State Compt. 78-484. Further , the "Term , the court " within this section which states that official records and papers relating to case involving a youth who has been adjudicated a youthful offender are confidential and may not be made available **except** " where specifically required or permitted by statute or upon specific **authorization of the court** " refers to the court which rendered youthful offender adjudication , and **not** to [A]nother court ' in which an interested person wishes to **utilize** records made confidential under this [S]ection ." SEE ROYAL GLOBE Ins. Co. Vs. MOTTOLA , 1982 , 89 A.D.2d. 907,453 N.Y.S. 2d. 723.

In a different context ' The Supreme Court has recognised that it is an **unacceptable** deviation from our fundamental system of justice to **automatically** prevent the assertion of "Actual Innocence" simply because a defendant has not observed avenues available to him . SEE ENGLE Vs. ISAAC , 465 U.S. 107, 135, 102 S.Ct. 1558 , 1575-76 , 71 L.Ed. 2d. 783 (1982); (where the Court Stated :)

" That since the concepts of cause and prejudice are not rigid " but take their meaning from.....Principles of comity and finality [I]n the appropriate cases those principles must yield to the imperative of correcting a fundamental unjust incarceration " **i.d.**

Also See- MURRAY Vs. CARRIER , 477 U.S. 478, 496, 106 S.Ct. 2639 , 2649, 2650. 91 L.Ed. 2d. 397 (1985);

" Where a Constitutional violation has probably resulted in the conviction of one who is actually innocent , a federal Habeas Court may grant the Writ even in the absence of a showing of cause for procedural default ." **i.d.**

In the instant case before this Habeas Court ' the petitioner was not allowed to **[O]bject** to the pre-sentencing report , [B]ecause Appointed Counsel (Robert Cooper) Caused **breakdown** in communications , towit allowing [S]ubstitute **probation** officer to leave county jail without **speaking** to the petitioner . [A]lleging that petitioner advised him that he didnt wish to speak with probation Officer . Futhermore ' the probation office had been **unable** to **[S]ecure** information from New York State Court House . SEE **EXHIBIT #I.1** . (P.S.I. Report) therein **Admitting** that all information gathered for the report , Came from "[A]" N.Y. Detective (Sica). As the petitioner **did** wish to present evidence that would prove that sentence was **defective** ' Sentencing Judge would Rule , That the petitioner could make **[N]o Objections** to P.S.I. ' Because the **[P]etitioner [F]ailed** to **submit** objections prior to sentencing ! **[D]isregarding** his **[O]wn "Assurances"** **That Counsel "Would"** be the one to **present** arguments ' **[T]o the [C]ourt on the petitioners Behalf** . SEE **EXHIBITS #J.1** .
Where the petitioner asked that he be allowed to defend himself (arrg pg#)

yet the sentencing judge avoid petitioners ' attempts to remind him of his own assurances , arguing that he personally advised the petitioner [A]t - Arraignment that he would have 15 days to make objections to P.S.I. therein collaterally estopling the petitioners objections to be heard . , Yet the petitioner was unable to secure documents from N.Y. State Court ' , Until he was informed [W]hy his family has not been able to retrieve any ' [I]nformation Concerning Indictment # [771-82] , And only [A]fter the petitioner Had Given His Mother (Mrs. Joan Mosley) Noterized Consent To View / and Copy Sealed information , Was the petitioner able to submit ' such document to this court in this instant [M]atter . As the petitioner Is Actually Innocent of 4.B.1. Career Criminal Enhanced [S]entence . And the petitioner [H]as been prejudiced by such status (SEE U.S.S.G.) petitioner claim should be remedied . SEE U.S. Vs MAYBECK , 23 F.3d.889 at 3 (4th Cir. 1994); MILLS Vs. JORDAN , 979 F.2d. 1273 , 1279 (7th Cir. 1992); JONES VS. ARKANSAS , 929 F.2d. 375,381 & n. 16 (8th Cir. 1991); ALSO SEE - U.S. Vs. MIKALAJUNAS , 186 f.3d. 490 at 495 [10](4th Cir. 1999) ; (Concluding)

" That that under the reasoning of may- beck actual innocence applies in non-capital sentencing only in the context of eligibility for application of a career offender or other habitual offender guideline provision." i.d.

Also See UNITED STATES VS. McLAMB ,77 F.3d. 472, 1996 WL 79438, at **3 n. 4 (4th Cir. 1996) (Unpublished table disposition). See supra n.1. Judge Niemeyer concurring opinion . See i.d. at **5 (Niemeyer J. ,Concurring . Furthermore this claim is cognizable on 2241 , Because he can show that he is Actually Innocent of the career criminal enhancement that he is now being Forced to Serve by respondent .

CONCLUSIONS

Wherefore the petitioner Respectfully Moves This Honorable Judge to Incorporate petitioners Actual Innocence Claims to Clarify Evidence that ' petitioner had presented in motions for **discovery denied** by this Court , For Now. (Borrowing from the honorable Judges Language of Order Denying - **in Camera Inspection of Original Documents** pursuant to 2247 motion). As the petitioners Has Requested **discovery** in good faith ' And Maintained h-is Claim Of **Innocence** . Petitioner should be Allowed to Perfect his cl-aims [B]efore Appeal to the Third Circuit Court Of Appeals , to **Avoid "A"** further Miscarraige of [J]ustice . The Petitioner Further request that ' Counsel be Appointed at the point . As the petitioner Asserts that the ' Complexity of this Litigation , Coupled with the Consequences . where as The petitioners entire Life **weighs** in the [B]alance . Justice would [N]ot be [S]erved , to Allow An **Innocent Man** to crippled in procedural Obstacles that **even** an Attorney would find uncertainty . The petitioner Would also Like To Submit the Case of **MARTIN Vs. EDWARD PEREZ**, 319 F3rd. 799 (6th Cir 2003) As Further Authority Supporting **Saftey Clause** for Filing 2241 **Petit-ion** .

Respectfully Submitted this 7th Day of Aug 2003.




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CERTIFICATE OF SERVICE

I , THE PETITIONER (ALLEN MORSLEY) , HEREBY CERTIFY THAT I HAVE PLACED COPY OF MOTION TO AMEND TO CONFORM TO EVIDENCE IN MAIL BOX (MARKED LEGAL. IN U.S.P. LEE COUNTY), WITH POSTAGE PAID . ADDRESSED TO COUNSEL FOR THE RESPONDENT (MATHEW E. HAGGERTY AUSA) 228 Walnut Street P.O. BOX - 11754 , HARRISBURG PA. 17108 . I , THE PETITIONER , FURTHER CERTIFY THAT I HAVE FILED /MAILED SUCH COPY ON THIS 7th DAY OF AUG. 2003 .

OF THIS DO I AFFIX MY HAND THIS DAY 7th Aug 2003


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